

REMARKS

Status of the Claims

Claims 1, 3-10, 12-16, and 27-34 were pending in the present application. Applicants have amended claims 1, 12, and 27. Applicants submit that these amendments add no new matter. After entry of this amendment, claims 1, 3-10, 12-16, and 27-34 will be pending in this application.

Support for Claim Amendments

Claims 1, 12, and 27 have each been amended to recite that a well strip comprises a plurality of inseparably connected wells wherein each well is physically connected to an adjacent well, each of said wells for containing a fluid sample therein. Support for this amendment is found throughout the specification as originally filed and as follows:

For example, in paragraph 2 at page 1, Applicants' specification states that "a sample well strip has a plurality of sample wells...which are physically connected to each other...for holding samples, such as aliquots of a reaction mixture... ."

In addition, in paragraph 30 at page 5, Applicants' specification further states that "each sample well of the well strip is adjacent to at least one other well."

Further, FIGS. 2, 4, and 7 describe a plurality of inseparably connected wells. While the specification does not use the words "inseparably connected" to describe the wells of the claimed well strip, "*ipsis verbis* disclosure is not necessary to satisfy the written description requirement of section 112. Instead, the disclosure need only reasonably convey to persons skilled in the art that the inventor had possession of the subject matter in question." Fujikawa v. Wattanasin, 93 F.3d 1559, 1570, 39 USPQ2d 1895, (Fed. Cir. 1996). Given that "drawings alone may provide a 'written description of an invention' as required by § 112," (Vas-Cath Inc. v. Mahurkar 935 F.2d 1555, 1564, 19 USPQ 2d 1111, 1119 (Fed. Cir. 1991)), Applicants submit that FIGS. 2, 4, and 7 demonstrate possession by Applicants' of the concept of a well strip comprising a plurality of inseparably connected wells.

For example, FIGS. 2 and 4 show a plurality of wells 108 defined by four walls including side walls 121, 124, which are substantially adjacent to the base 112 of each well 108. Side wall

121, as shown in FIGS. 2 and 4, is continuous, without any separation points, breaks or gaps, and no means are depicted for disconnecting one well 108 from another well. Thus, the wells 108 as illustrated are inseparably connected.

Additionally, FIG. 7 shows a sectional view of a well strip further disclosing a plurality of inseparably connected wells. As shown, the wells 108 are defined by one continuous piece of material, shown by the unbroken cross-hatched space. This continuous piece forms the walls 122, 123 of the wells as well as the base 112 of the wells. The wells 108 are connected to the adjacent well or wells 108 without a break or separation, shown by the continuous cross-hatching, indicating that the wells 108 are continuous and therefore inseparably connected.

Rejections under 35 U.S.C. 102(b)

Claims 1-2, 3-10, 12-16, and 27-34 stand rejected under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 5,285,907 to Franchere *et al.* ("Franchere"). Applicants traverse the rejection to the extent it is maintained over the claims as amended.

Claim 2 was canceled in the Amendment and Response to Restriction Requirement filed on July 1, 2004. Therefore, Applicants respectfully request that the Examiner withdraw the rejection with respect to claim 2.

It is well settled law that an anticipating reference must teach each and every element of a claimed invention. (Glaxo, Inc. v. Novopharm Ltd., 52 F.3d 1043, 1047 (Fed. Cir. 1995)). Applicants submit that Franchere does not teach each and every element of the claimed invention. Therefore, for the reasons outlined below, Franchere is an improper reference under 35 U.S.C. 102(b).

As amended, independent claims 1, 12 and 27 each recite a well strip comprising a plurality of inseparably connected wells wherein each well is physically connected to an adjacent well, each of said plurality of wells for containing a fluid sample therein.

In contrast to Applicants' claimed invention, Applicants submit that Franchere teaches modular units with openings that serve as guides for supporting a plurality of tubes. The tubes, according to Franchere, may hold fluid samples. (See *e.g.* Col. 1, lines 7-15; Col. 1, lines 26-30; Col. 1, lines 47-52; Col. 3, lines 27-30; Col. 4, lines 21-28).

Franchere's modular units, absent a tube, cannot contain a fluid sample as required by Applicants claimed invention. Franchere teaches that "each of the side wall panels [of the modular units] have openings" to reduce the quantity of material required for making the modular units, to reduce the weight of the unit, and to allow for "observation of a specimen in the container supported in the modular unit." (Col. 3, lines 1-6). Applicants submit that a modular unit with holes in the side walls could not contain a fluid sample for analysis as required by Applicants' claimed invention because the sample would spill through the openings in the side wall.

In contrast to Applicant's claimed invention, Franchere does not teach or suggest a plurality of inseparably connected wells for holding a fluid therein in a well strip wherein each well is physically connected to an adjacent well. Rather, Franchere's assembled modular unit lacks wells until Franchere's tubes are inserted through the guide openings in the modular unit. Franchere does not teach or suggest tubes inseparably connected to one another for holding fluid samples. For example, neither FIG. 1 of Franchere, which shows a modular unit before it is assembled, nor FIG. 2, which shows a modular unit after it is assembled, show inseparably connected test tubes or containers. Not one of the modular units depicted by Franchere nor the corresponding text disclose inseparably connected test tubes for holding a fluid sample. Franchere's modular units only have openings in the top surface such that each opening supports an individual tube placed therein after assembly of the modular unit (col. 3, lines 27-30; col. 4, lines 21-28). Accordingly, Applicants submit that Franchere does not teach a well strip comprising a plurality of inseparably connected wells wherein each well is physically connected to an adjacent well, each well for containing a fluid sample.

For these reasons, Applicants submit that Franchere does not teach or suggest a well strip comprising a plurality of inseparably connected wells, each well physically connected to an adjacent well for containing a fluid sample therein as required by independent claims 1, 12, and 27. Consequently, Applicants submit that Franchere is an improper reference under 35 U.S.C. 102(b). Applicants therefore respectfully request reconsideration and withdrawal of the rejection of independent claim 1 and claims 3-10 and 28-31 depending from claim 1, independent claim 12 and claims 13-16 and 32-34 depending from claim 12, and independent claim 27.

CONCLUSION


Applicants submit this application is in condition for allowance and request favorable action. The Examiner is invited to telephone the undersigned representative at the number indicated below to discuss any outstanding issues.

Respectfully submitted,

Date: March 23, 2006
Reg. No. 44,244

Tel. No.: (617) 261-3167
Fax No.: (617) 261-3175

BOS-943981 v1


Ronda P. Moore, D.V.M.
Attorney for the Applicants
Kirkpatrick & Lockhart Nicholson
Graham LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111-2900